TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. ~~326~~ 99

THOMAS H. POWERS AND WILLIAM WEIGHTMAN, CO-PARTNERS, TRADING AS POWERS & WEIGHTMAN, PLAINTIFFS IN ERROR,

vs.

SETH I. COMLY, COLLECTOR OF THE CUSTOMS FOR THE DISTRICT OF PHILADELPHIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JANUARY 24, 1877.

SUPREME COURT OF THE UNITED STATES.

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vs.

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1 *Writ of error.*

UNITED STATES OF AMERICA, *set:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between Thomas H. Powers and William Weightman, copartners, trading as Powers and Weightman, plaintiffs, and Seth I. Comly, collector of the customs for the district of Philadelphia, defendant, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said Thomas H. Powers and William Weightman, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this thirteenth day of November, A. D. one thousand eight hundred and seventy-six, and in the one hundred and first year of the Independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

Allowed.

W. MCKENNAN,
Cir. Judge.

The return to the foregoing writ appears by the schedule hereto annexed.

SAMUEL BELL,
Clerk U. S. Cir. Ct.

2 THOMAS H. POWERS AND WILLIAM Weightman, co-partners, trading as Powers and Weightman,
vs.
SETH I. COMLY, COLLECTOR OF THE CUSTOMS for the district of Philadelphia.
} Summons case.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1874, No. 2.

It is thus contained:

Be it remembered that on the eleventh day of August, in the year of our Lord one thousand eight hundred and seventy four, William McMichael, esquire, district attorney of the United States for the eastern dis-

trict of Pennsylvania, comes into court and presents the petition of Seth I. Comly for the removal of the cause from the district court for
3 the city and county of Philadelphia, which said petition, being filed, is in the words and of the tenor following, to wit:

Petition for certiorari to the district court for the city and county of Philadelphia.

To the honorable the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit:

The petition of Seth I. Comly, collector of the customs for the district of Philadelphia, respectfully represents—

That a suit has been commenced by summons case against him, as defendant, by Thomas H. Powers and William Weightman, copartners, trading as Powers and Weightman, plaintiffs, in the district court for the city and county of Philadelphia, in the State of Pennsylvania, to June term, 1874, No. 2052.

That the said suit is brought on account of an act done by him under the revenue laws of the United States as collector of the port of Philadelphia, the suit being to recover a certain sum of money paid for and on account of the said plaintiffs to the said defendant,
4 as collector aforesaid, as duties on certain merchandise. He respectfully prays that the said cause may be entered on the docket of your honorable court and proceeded in as in a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said district court to send to the said circuit court of the United States in and for the eastern district of Pennsylvania the record and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

S. I. COMLY, *Collector.*

Seth I. Comly, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

S. I. COMLY.

Sworn and subscribed before me this 31st day of July, A. D. 1874.

[SEAL.] SAMUEL BELL,
U. S. Com'sr.

5 I hereby certify that, as counsel for the above petitioner, I have examined the proceedings against him and carefully enquired into all the matters set forth in the above petition, and that I believe the same to be true.

WILLIAM McMICHAEL.

(Indorsed:) No. 2. October session, 1874. Circuit court United States. Eastern district of Penn'a. Powers & Weightman vs. Seth I. Comly, collector, &c. Petition for certiorari. Filed eleventh August, 1874.

6 Which said petition having been filed, it was ordered by the court here that a writ of certiorari do immediately issue, directed to the district court of the city and county of Philadelphia, which said writ was in the words following, to wit:

7 *Writ of certiorari.*

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct:

The President of the United States to the honorable the judges of the district court for the city and county of Philadelphia, in the State of Pennsylvania, greeting:

Whereas lately in your said district court for the city and county of Philadelphia a suit was brought by summons case against Seth I. Comly, collector of customs for the district of Philadelphia, by Thomas H. Powers and William Weightman, copartners, trading as Powers and Weightman, of June term, 1874, No. 2052, which said suit, as it is said, is still pending before you in the said district court for the city and county of Philadelphia undetermined; and whereas on the application of the said Seth I. Comly, collector as aforesaid, to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion, supported by proper evidence, that the said suit was brought on account of an act done by him, under color of his office, as collector of the customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiffs to the said Seth I. Comly, collector aforesaid, for duties claimed to be due and owing from the said plaintiffs to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said district court for the city and county of Philadelphia, to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided:

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden in Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of October next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this eleventh day of August, A. D. 1874, and in the ninety-ninth year of the Independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court, U. S.

8 And afterwards, to wit, on the twenty-first day of August, A. D. 1874, the said writ of certiorari was returned into the said circuit court of the United States with the record and proceedings of the said district court for the city and county of Philadelphia annexed, which said return and record being read are as follows, to wit:

Return to the writ of certiorari.

To the honorable judges within named:

The record and proceedings within mentioned and all things touching the same we certify and send, together with this writ.

AMOS BRIGGS. [SEAL.]
JAMES LYND. [SEAL.]

Among the records of the district court for the city and county of Philadelphia, of June term, A. D. 1874, No. 2052, the following is contained:

9 *Record of district court for the city and county of Philadelphia.*

In the district court for the city and county of Philadelphia, of June term, 1874.

J. C. Walker, Wm. Ernst.

THOMAS A. POWERS & WILLIAM WEIGHTMAN, copartners, trading as Powers & Weightman,
vs.
SETH I. COMLY, COLLECTOR OF CUSTOMS OF the port of Philadelphia.
} No. 2052.

W. McMichael, July 25, '74.
Sum's case.
Exit July 9, 1874.
Ret. 1st Mon. August, 1874, "served."
Sept. 3, '74, certiorari from U. S. circuit court E. D. of Pa. brought into office.
Certified from the record this 12th day of September, A. D. 1874.
[SEAL.] W. H. BENCKERT,
Pro Proth'y.

10 *Summons.*

CITY AND COUNTY OF PHILADELPHIA, *ss:*

The commonwealth of Pennsylvania to the sheriff of Philadelphia County, greeting:

We command you that you summon Seth I. Comly, collector of customs of the port of Philadelphia, Penn., late of your county, so that he be and appear before our judges, at Philadelphia, at our district court for the city and county of Philadelphia, to be holden at Philadelphia, in and for the said city and county of Philadelphia, the first Monday of August next, there to answer Thomas H. Powers and William Weightman, copartners, trading as Powers & Weightman, of a plea of trespass on the case, etc. And have you then there this writ.

Witness the honorable J. I. Clark Hare, doctor of laws, president of our said court, at Philadelphia, the ninth day of July, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] LEWIS F. LIST,
Pro Prothonotary.

Served by leaving a true and attested copy of the within writ at the dwelling-house of Seth I. Comly, the within-named def't, with an adult member of his family, July 14, '74.

So answers—

W. B. SPOONER,
Dep'ty Sheriff,
W. ELLIOTT, *Sheriff.*

(Indorsed:) 2052. June term, 1874. Thomas H. Powers et al., &c., vs. Seth I. Comly, 1532 Pine st., collector of customs port of Philadelphia. L. R 7, 14. Summons case. Walker, Wm. Ernst.

11 *Rule on plaintiffs to declare, &c.*

And afterwards, to wit, on the nineteenth day of February, A. D. 1875, the defendant, by William McMichael, esquire, his attorney, comes into court here and enters a rule on the plaintiffs to declare in two weeks or judgment sec. reg.

And afterwards, to wit, on the fifth day of March, A. D. 1875, the plaintiffs, by R. J. C. Walker and William Ernst, esquires, their attorneys, come into court here and file their narr in assumpsit, which being read is as follows, to wit:

12 *Narr.*

In the circuit court for the United States for the eastern district of Pennsylvania, of October sessions, 1874.

THOMAS H. POWERS AND WILLIAM WEIGHTMAN, copartners, trading as Powers & Weightman,
vs.
SETH I. COMLY, COLLECTOR OF CUSTOMS FOR the port of Philadelphia.
} No. 2.

Seth I. Comly, collector of customs for the port of Philadelphia, was summoned to answer Thomas H. Powers and William Weightman, copartners, trading as Powers & Weightman, of a plea of trespass on the case; and thereupon the said plaintiffs, by R. J. C. Walker and William Ernst, their attorneys, complain:

13 For that whereas the said defendant, Seth I. Comly, collector, aforesaid, on the first day of July, in the year of our Lord one thousand eight hundred and seventy-four, to wit, at the county aforesaid, was indebted to the said plaintiffs, Powers & Weightman, in the sum of fifty thousand dollars, lawful money of the United States of America, for divers goods, wares, and merchandise by the said plaintiffs to the said defendant before that time sold and delivered at his special instance and request.

And also in the further sum of fifty thousand dollars, like money, for the work, labour, care and diligence of the said plaintiffs by them before that time done, performed and bestowed in and about the business of the said defendant, at his like special instance and request.

And also in the further sum of fifty thousand dollars, like money, for so much money by the said plaintiffs before that time lent and advanced and paid, laid out and expended, to and for the use of the said defendant, and at his like instance and request.

And also in the further sum of fifty thousand dollars, like money, for other money by the said defendant before that time had and received to and for the use of the said plaintiffs.

And also in the further sum of fifty thousand dollars, like money, for so much money then and there found to be due and owing from the said defendant to the said plaintiffs, and in arrear and unpaid, upon an account then and there stated between them.

And being so indebted he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook and faithfully promised the said plaintiffs to pay them the said several sums of money in this count mentioned when he, the said defendant, should be thereunto afterwards requested.

Nevertheless the said defendant, not regarding his said several promises and undertakings, hath not paid the said several sums of money, or any of them, or any part thereof, to the said plaintiffs, although often requested so to do; but the said defendant hath hitherto neglected and refused, and still doth neglect and refuse to pay the same to the said plaintiffs to the damage of the said plaintiffs of one hundred thousand dollars, and therefore they bring suit, &c.

John Doe, Richard Roe, pledges, &c.

WM. ERNST,
Attorney for Pl'ffs.

MARCH 5, 1875.

To the clerk of the circuit court for the United States, eastern district of Pennsylvania.

14 (Indorsed:) 2 October, S. 1874. C. C. U. S. Powers & Weightman vs. Seth I. Comly, collector, &c. Narr in assumpsit. Filed March 5, 1875. Ernst, Walker, for pl'ffs.

15 And afterwards, to wit, on the third day of March, A. D. 1876, the said defendant, Seth I. Comly, by John K. Valentine, esquire, his attorney, came into court here and filed his plea, which said plea is as follows, to wit:

Plea.

C. C. U. S., Oct. sess., 1874.

POWERS *vs.* COMLY. } No. 2.

And the said defendant, by John K. Valentine, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country, &c.

JOHN K. VALENTINE,
Att'y for Def't.

16 (Indorsed:) 2. Oct. sess. 1874. C. C. U. S. Powers vs. Comly. Plea. Filed 3rd March, 1876. J. K. Valentine.

17 *Trial.*

And afterwards, to wit, on the thirteenth day of April, A. D. 1876, this cause being now called for trial by order of the court, a jury being called, come, to wit, &c.:

1. George K. Mecke,
2. Charles W. Newhouse,
3. Frederick Fox,
4. Jeremiah Mohler,
5. George W. Jones,
6. Abraham B. Long,
7. Edmund C. Bonsal,
8. Henry B. Talley,
9. John B. Holloway,
10. William A. Bosler,
11. William J. Burkhardt,
12. Martin S. Fry,

who are respectively sworn or affirmed to try the issue joined, and a true verdict render, according to the evidence.

And afterwards, to wit, on this day, the jurors aforesaid, on their oaths or affirmations aforesaid, respectfully do say that in the issue joined they find—

18 *Special verdict.*

I. That the plaintiffs are citizens of the city of Philadelphia, where they conduct their business as manufacturing chemists.

II. That for the purposes of said business the plaintiffs import and use large quantities of opium.

III. That the plaintiffs imported into the port of Philadelphia, in the year 1874, from Liverpool, England, a place west of the Cape of Good Hope, certain opium, the growth or product of Persia, in Asia, a country east of the Cape of Good Hope.

IV. That the opium was carried from Persia to England by way of the Isthmus of Suez and the Mediterranean Sea.

V. That the defendant, as collector of the port of Philadelphia, declined to deliver the said opium to the plaintiffs without first paying the additional duty of 10 per cent. imposed by section 2501 of the Revised Statutes and 3 section act of June 6th, 1872.

VI. That the plaintiffs duly protested against the payment of the said duty of 10 per cent., and duly appealed from the decision of the collector, which appeal was duly referred to the Treasury Department of the United States, by which the decision of the collector was affirmed.

VII. That the said collector has collected from the plaintiffs, on certain opium imported by them in the manner above mentioned, the said additional duty of 10 per cent., amounting to $2,447, to recover which the plaintiffs have brought suit, within the proper period prescribed by law.

VIII. That the said jurors further say that they are ignorant, in point of law, on which side they ought, upon these facts, to find the issue; but that if the court shall be of opinion that the plaintiffs are entitled to recover the moneys thus paid as aforesaid to the defendant, or any part of it, then they find for the plaintiffs, and assess the damages at such sum as shall be equal to the money thus to be recovered, together with interest at the rate of six per cent. per annum (in gold) from the dates of payments; but that if the court shall be of opinion that the plaintiffs are not entitled to recover the said moneys, or any part thereof, then they find for the defendant.

19,20 Whereupon, afterward, to wit, on the fourteenth day of October, A. D. 1876, before the Honorable William McKennan, judge of the said circuit court, this cause came on to be heard, on motion for judgment on special verdict, and the court having heard the argument of William Ernst and Henry Flanders, esquires, counsel for plaintiffs, and John K. Valentine, esquire, counsel for the defendant, takes the same under advisement.

Judgment on special verdict.

And afterwards, to wit, on the twenty-sixth day of October, A. D. 1876, the premises being seen and fully understood by the court here, and mature deliberation being had thereon, it is ordered that judgment be entered on the special verdict in favor of the defendant.

21 And afterwards, to wit, on the fifteenth day of December, A. D. 1876, came again the said plaintiffs, Thomas H. Powers and William Weightman, by their said attorneys, William Ernst and

Henry Flanders, esquires, and filed in the clerk's office of said court their bond herein, which said bond is in the words following, to wit:

22 *Bond sur writ of error.*

In the circuit court of the United States in and and for the eastern district of Pennsylvania, October session, 1874.

THOMAS H. POWERS AND WILLIAM WEIGHTMAN, copartners, trading as Powers and Weightman,
vs.
SETH I. COMLY, COLLECTOR OF THE CUSTOMS for the district of Philadelphia.
} No. 2.

Know all men by these presents that we, Thomas H. Powers and William Weightman, as principals, and John F. Weightman and William Weightman, jr., all of the city of Philadelphia, as sureties, are held and firmly bound unto Seth I. Comly, collector of the customs of the district of Philadelphia, in the sum of five hundred dollars, lawful money of the United States of America, to which payment well and truly to be made we do bind and oblige ourselves, our heirs, executors, and administrators, and every of them, jointly and severally,
23 firmly by these presents, sealed with our seals, dated this eighth day of December, anno Domini one thousand eight hundred and seventy-six (1876).

Whereas in the above-entitled suit a judgment was rendered against the above named plaintiffs, Thomas H. Powers and William Weightman, to which judgment a writ of error from the Supreme Court of the United States has been obtained by the said Thomas H. Powers and William Weightman, the same being returnable to the second Monday of October, A. D. 1877.

Now the condition of this obligation is such, that if the said Thomas H. Powers and William Weightman shall prosecute the said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

THOMAS H. POWERS. [L. S.]
WILLIAM WEIGHTMAN. [L. S.]
JOHN F. WEIGHTMAN. [L. S.]
WM. WEIGHTMAN, JR., [L. S.]

Sealed and delivered in the presence of us –
SAMUEL BELL.
WM. ERNST.

24 (Indorsed:) No. 2. October, 1874. Cir. ct. U. S. E. D. of Pa. Powers et al. vs. Comly. Bond sur writ of error. Approved. W. McKennan, cir. judge. Filed Dec'r 15, 1876.

25 *Citation sur writ of error.*

The United States of America to Seth I. Comly, collector of the customs for the district of Philadelphia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant of a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of

Pennsylvania, in the third circuit, wherein Thomas H. Powers and William Weightman are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 15th day of December, in the year of our Lord one thousand eight hundred and seventy-six.

W. McKENNAN,
Cir. Judge.

26 Service accepted for defendant.

JOHN K. VALENTINE,
Att'y for Defendant.

12, 1876.

(Indorsed:) No. 2. October sess., 1874. Cir. ct. U. S. E. D of Pa. Powers et al. vs. Comly. Citation sur writ of error. Returned Dec'r 18, 1876.

27 *Assignment of error.*

In the Supreme Court of the United States, of October term, 1877.

THOMAS H. POWERS & WILLIAM WEIGHTMAN, trading as Powers & Weightman, pl'ffs in error,
vs.
SETH I. COMLY, COLLECTOR OF CUSTOMS OF the port of Philadelphia, Pennsylvania, def't in error.
} No. .

Sur writ of error to the circuit court of the United States for the eastern district of Pennsylvania, of October sessions, 1874, No 2.

Assignment of error.

The plaintiffs in error file the following assignment of errors:

That the learned (circuit) court erred in entering judgment for the defendant below on the special verdict as found by the jury.

R. J. C. WALKER,
WILLIAM ERNST,
HENRY FLANDERS,
Of Counsel for Pl'ffs.

To the hon. the clerk of the Supreme Court of the U. S., Washington, D. C.

28 Circuit court of the United States, eastern district of Pennsylvania, ss:

I, Samuel Bell, clerk of the circuit court of the United States for the eastern district of Pennsylvania, do hereby certify the foregoing to be a true and complete copy of all the papers filed, proceedings therein had, and process issued, in a certain cause wherein Thomas H. Powers and William Weightman, copartners, trading as Powers and Weightman, are plaintiffs, and Seth I. Comly, collector of the customs for the district

of Philadelphia, is defendant, as the same appears of file and record in in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at my office, in the city of Philadelphia, in said district, this eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the one hundred and first.

[SEAL.] SAMUEL BELL, *Clerk.*

(Indorsement on cover:) No. 326. Thomas H. Powers and William Weightman, copartners, trading as Powers & Weightman, vs. Seth I. Comly, collector of the customs for the district of Philadelphia E. Pennsylvania C. C. U. S. Filed 24th January, 1877.

SUPREME COURT OF THE UNITED STATES.

Nos. 97, 98, and 99.

THOMAS H. POWERS and WILLIAM WEIGHTMAN, Co-partners, trading as POWERS & WEIGHTMAN, Plaintiffs in Error,

vs.

SETH I. COMLY, Collector of the Customs for the District of Philadelphia.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF OR ABSTRACT OF THE CASE, POINTS, ETC., ON BEHALF OF THE PLAINTIFFS IN ERROR.

R. J. C. WALKER,
WILLIAM ERNST,
HENRY FLANDERS,
Of Counsel for Plaintiffs.

COLLINS, Printer, 705 Jayne Street.

SUPREME COURT OF THE UNITED STATES.

October Term, 1879. No. 97.

THOMAS H. POWERS and WILLIAM WEIGHTMAN, trading as POWERS and WEIGHTMAN,

vs.

SETH I. COMLY, Collector of Customs of the Port of Philadelphia, Pennsylvania.

THE FACTS.

On the 13th day of April, 1876, the jury in the Circuit Court found the following special verdict:—

"And the jurors, on their oaths or affirmations, do say, that they find:—

I. That the plaintiffs are citizens of the city of Philadelphia, where they conduct their business as manufacturing chemists.

II. That for the purposes of said business the plaintiffs import and use large quantities of opium.

III. That the plaintiffs imported into the port of Philadelphia, in the year 1874, from Liverpool, England, a place west of the Cape of Good Hope, certain opium, the growth or product of Persia, in Asia, a country east of the Cape of Good Hope.

IV. That the opium was carried from Persia to England by way of the Isthmus of Suez and the Mediterranean Sea.

V. That the defendant, as Collector of the Port of Philadelphia, declined to deliver the said opium to the plaintiffs without first paying the additional duty of 10 per cent. imposed by Section 2501 of the Revised Statutes and 3 Section Act of June 6, 1872.

VI. That the plaintiffs duly protested against the payment of the said duty of 10 per cent., and duly appealed from the decision of the Collector, which appeal was duly referred to the Treasury Department of the United States, by which the decision of the Collector was affirmed.

VII. That the said Collector has collected from the plaintiffs, on certain opium imported by them in the manner above mentioned, the said additional duty of 10 per cent., amounting to $2447, to recover which the plaintiffs have brought suit, within the proper period prescribed by law.

VIII. That the said jurors further say that they are ignorant, in point of law, on which side they ought, upon these facts, to find the issue; but, that if the Court shall be of opinion that the plaintiffs are entitled to recover the moneys thus paid as aforesaid to the defendant, or any part of it, then they find for the plaintiffs, and assess the damages at such sum as shall be equal to the money thus to be recovered, together with interest at the rate of 6 per cent. per annum (in gold) from the dates of payments; but, that if the Court shall be of opinion that the plaintiffs are not entitled to recover the said moneys, or any part thereof, then they find for the defendant.

SAME
v.
SAME.

Supreme Court of the United States.
October Term, 1879.
No. 98.

In this case the special verdict is, in all respects, similar to that rendered in the foregoing, except as to the amount of the additional duty paid, which, in this case, is $6349.60.

SAME
v.
SAME.

Supreme Court of the United States.
October Term, 1879.
No. 99.

In this case the special verdict is, in all respects, similar to that rendered in the two prior ones, except as to the amount of the additional duty paid, which, in this case, is $11,594.20.

The section of the Act of Congress under which these duties were levied, is as follows:—

Copy of the III. Section of the Act of Congress of June 6, 1872.

"SECTION 3.—That on and after the first day of October next, there shall be collected and paid on all goods, wares, and merchandise of the growth or produce of countries east of the Cape of Good Hope (except wool, raw cotton, and raw silk as reeled from the cocoon, or not further advanced than tram, thrown, or organzine), when imported from places west of the Cape of Good Hope, a duty of ten per centum *ad valorem*, in addition to the duties imposed on any such article when imported directly from the place or places of their growth or production."

This section of the Act of Congress of June 6, 1872, is substantially the same as prior enactments, increasing temporarily the duties on imports; such as the Act of July 14, 1862 (Sec. 14), of June, 1864, and of the Act of March 3, 1865 (Sec. 6). The Treasury Department has construed these Acts.

On April 24, 1863, it held: "That by 'countries beyond the Cape of Good Hope,' is meant all countries with which we carry on commercial intercourse by means of vessels passing by or around the Cape of Good Hope in a westwardly direction when sailing to this country, and which,

in the ordinary course of navigation, are reached from here and from England by vessels passing by or around the Cape of Good Hope eastwardly."

On September 23, 1863, and again July 11, 1865: "Goods, the production of countries beyond the Cape of Good Hope, coming from places this side, which they have reached by *overland* route, &c., are not liable to the additional ten per centum duty.

See Heyl's U. S. Import Duties, 1874, foot-note, p. 77.

Turkey in Asia and Persia are adjoining countries, and both are clearly east of the Cape of Good Hope. On goods from Turkey, the usual duties only are imposed, while the attempt here is to subject those from Persia to the additional and discriminating duty of ten per cent.

The following is a U. S. Treasury decision giving interpretation to the direct question involved under the Act of June 6, 1872:—

"Sugar, the product of Egypt, a country on the Mediterranean Sea, lying east of the meridian of the Cape of Good Hope, which was imported from Liverpool, was held to be not liable to the discriminating duty of ten per centum under the 3d Section of the Act of June 6, 1872, it having been previously decided that by the term 'countries beyond the Cape of Good Hope,' *was meant such countries as are ordinarily reached, in commercial intercourse, by sailing round the Cape.*"—U. S. TREASURY DECISIONS, 1874, p. 221.

In construing these several Acts, the Treasury Department has looked to the fact, whether we carried on commercial intercourse, with any particular country, beyond the Cape of Good Hope; and if not, then its geographical situation alone did not bring its products within the meaning of the legislation in question.

These decisions of the Treasury Department, and its practice in conformity thereto, it is submitted, establish a rule which must be recognized and regarded in construing the Act of 1872.

That no direct commerce has ever existed between Persia and the United States, the following exhibits will show:—

OFFICE OF THE ATLANTIC MUTUAL INSURANCE CO.,
NEW YORK, *April* 17, 1876.

Messrs. POWERS & WEIGHTMAN,
PHILADELPHIA, PA.

GENTLEMEN: We are in receipt of your letter of the 15th instant.

We are not aware of any direct trade between Persia and this country, and we have made inquiry of those most likely to know.

Messrs. Arnold, Hines & Co., of this city, are old traders on the east coast of Africa and Arabian Seas, and state, unhesitatingly, that there is no such trade. This is confirmed by Mr. Vernon H. Brown, a large ship owner, also familiar with the trade in and about the Indian Ocean and its tributaries.

If you will state in what form you desire this testimony we will endeavor to procure it for you. Both the parties named, we understand, are willing to make an affidavit in relation thereto.

Very respectfully your obedient servant,
CHARLES DENNIS,
Vice-President.

UNITED STATES OF AMERICA,
STATE, CITY AND COUNTY OF NEW YORK. } *ss.*

Benjamin R. Arnold, being duly sworn, says, that he is a member of the firm of Arnold, Hines & Co., of the city of New York; that said firm have been for many years en-

gaged in the commercial trade with the ports on the east coast of Africa and Arabian Seas; that during said period said firm have had no trade with Persia, or its ports, either by way of the Cape of Good Hope, or of the Suez Canal, and this deponent does not know of any direct trade, or direct commercial intercourse, between Persia or any of the ports of Persia and the United States, nor has he ever heard of any such direct trade or commercial intercourse.

BENJ. R. ARNOLD.

Subscribed and sworn to before me this twenty-second day of April, 1876.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA,
STATE, CITY AND COUNTY OF NEW YORK. } *ss.*

Vernon H. Brown, being duly sworn, says, that he is a member of the firm of Vernon H. Brown & Co. of this city. That said firm represent a large number of ships carrying cargoes from the East Indies and Indian Ocean and its tributaries to the United States. That they are familiar with the trade in and about the localities mentioned. That none of their vessels have ever made a voyage from a Persian port to the United States, and this deponent is not aware of any direct commercial intercourse between the ports of Persia and the United States, nor has he ever heard of any such trade.

VERNON H. BROWN.

Subscribed and sworn to before me, this 22d day of April, 1876.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

TREASURY DEPARTMENT, BUREAU OF STATISTICS,
April 21, 1876.

GENTLEMEN: I have the honor to acknowledge the receipt of your letter of 19th instant, and, in response to your inquiry, to say that there is no record in this Bureau of the arrival of any vessel in this country from any port in Persia, during the last three years, and probably none previously.

Very respectfully, yours,
EDWARD YOUNG,
Chief of Bureau.

Messrs. TAFT, LEE & Co.,
P. O. Box 1116,
NEW YORK.

OFFICE OF TAFT, LEE & Co.,
NEW YORK, *May* 31, 1876.

I, James H. Taft, of the firm of Taft, Lee & Co., Agents for Powers & Weightman, of Philadelphia, do hereby certify that we entered a certain lot of Persian Opium, marked P. & W. 272 | 295, twenty-four cases, which arrived on the 24th of March, 1871, per steamer Nevada, from London, without the payment of the Discriminating Duty, as we produced consular certificates, showing that the said opium was received in London from Persia, via the Suez Canal.

JAMES H. TAFT.

Subscribed and sworn to before me, this 31st day of May, A. D. 1876.

WILLIAM S. GERRISH,
Notary Public.

When the Act in question was passed, there was a subsisting treaty between Persia, a country, *geographically*, east of the Cape of Good Hope, and the United States. The following articles of which treaty relate to the subject of duties:—

Copy of Articles III. and IV. of the Treaty between the United States of America and Persia, ratified by both parties, June 13, 1857, *and proclamation made thereof August* 18, 1857. 11 U. S. Stat. p. 709:—

ARTICLE III.—The citizens and subjects of the two high contracting parties, travellers, merchants, manufacturers, and others, who may reside in the territory of either country, shall be respected and efficiently protected by the authorities of the country and their agents, and treated in all respects as the subjects and citizens of the most favored nation are treated.

They may reciprocally bring by land or by sea into either country, and export from it, all kinds of merchandise and products, and sell, exchange, or buy, and transport them to all places in the territories of either of the high contracting parties. It being, however, understood that the merchants of either nation who shall engage in the internal commerce of either country, shall be governed, in respect to such commerce, by the laws of the country in which such commerce is carried on; and in case either of the high contracting powers shall hereafter grant other privileges concerning such internal commerce to the citizens or subjects of other governments, the same shall be equally granted to the merchants of either nation engaged in such internal commerce within the territories of the other.

ARTICLE IV.—The merchandise imported or exported by the respective citizens or subjects of the two high contracting parties shall not pay in either country, on their arrival or departure, other duties than those which are charged in either of the countries on the merchandise or products im-

ported or exported by the merchants and subjects of the most favored nation, and no exceptional tax, under any name or pretext whatever, shall be collected on them in either of the two countries.

THE LAW.

1. In legislating upon the subject of imports, Congress is dealing with a commercial question, and it is submitted that the natural construction of the Act of June 6, 1872, is, that in its reference to countries east of the Cape of Good Hope, it means, what the Treasury Department has held it to mean, countries east of the Cape in a *commercial* sense. If such countries can be reached by our shipping, an advantage is given to the shipper, who ships directly. If the products of such countries are brought thence in foreign bottoms, and reshipped to our ports from ports west of the Cape of Good Hope, then the advantage is withdrawn, and an additional duty imposed. But when there are no commercial relations with a particular country east of the Cape of Good Hope, and with respect to which we carry on no commercial intercourse by or around the Cape, then the products of such country, it is respectfully submitted, do not fall within the meaning and intention of the Act.

2. Admitting the principle that an Act of Congress may supersede a prior treaty, yet as a treaty involves the good faith of the Government, it will not be abrogated by implication. The intention of the Legislature to abrogate it must appear in clear and unambiguous language.

The treaty with Persia obliges our government not to impose on her opium, imported into the United States, other duties than those paid by the merchants and subjects of the most favored nation. And no exceptional tax, under any name or pretext whatever, can be imposed on the mer-

chandise or products of Persia brought by land or sea into the United States.

And yet the Act of June 6, 1872, on the interpretation of the defendant in error, subjects the products of Persia to a tax of *ten per centum* over and above what the same products pay when imported from any country west of a certain line.

Did Congress intend to make this discrimination, and in plain disregard of the treaty? Is not the implication as strong that Congress did not intend to violate the treaty, as that it did?

The questions raised and decided in Hadden *v.* The Collector, 5 Wall. 107, and Sturgis *v.* Same, 12 Wall. 19, were different from the questions raised here, and do not determine it.

R. J. C. WALKER,
WM. ERNST,
HENRY FLANDERS,
Attorneys for Plaintiffs.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

THOMAS H. POWERS, &c., &c.,
vs.
COMLEY, COLLECTOR, &c.
} Nos. 97, 98, and 99.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

THOMAS H. POWERS, &c., &c.,
vs.
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} Nos. 97, 98, and 99.

BRIEF FOR THE UNITED STATES.

The record shows none of the matters mentioned in the correspondence printed in the brief of the learned counsel for the plaintiffs in error, and, therefore, these make no part of the case.

It is submitted that the provisions of the treaty quoted by the learned counsel have no reference to importations into the United States *from Great Britain*, even when these are of articles which originally were the growth of Persia.

Nor can the circumstance that certain goods have actually come to a country "west of the Cape of Good Hope," *overland*, or *by a newly-made artificial waterway* which dispenses with an actual *doubling* of that cape, change the meaning of a statute which when enacted included such country by an expression that turned upon the manner in which at that time water-borne

commerce naturally came therefrom to the United States (5 Wall. 107.) The cutting of the Suez Canal could not thus modify the laws of the United States. Nor if it had been competent to show that in fact there is not and never has been any commerce between Persia and the United States, could that circumstance affect the policy of an act which was intended to create and promote such commerce. Whoever, *at this time or hereafter*, may endeavor to build up direct commerce between the United States and Persia, is to be aided by the customs provision in question.

It seems that the cases in 5 Wall., 107, and 12 Wall., 19, cited by the learned counsel for the plaintiffs in error, are decisive of this case.

S. F. PHILLIPS,
Solicitor-General.

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